

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE, III

SC03-1846

TRIAL BRIEF ADDRESSING
AMENDED FORMAL CHARGE V

COMES NOW Respondent, **JUDGE JOHN RENKE, III**, by and through his undersigned counsel, and hereby files this, his Trial Brief Addressing Amended Formal Charge V, and states the following:

FACTS

1. In a political circular, prepared for Judge Renke's campaign, Judge Renke referenced numerous officials who endorsed his candidacy. (See Exhibit B [*sic*]¹ to the Notice of Amended Formal Charges, attached hereto as Exhibit 1).

2. Amended Formal Charge V contends that five of these people, specifically, Paul Bedinghaus, Gail Hebert, John Milford, George Jirotko and Nancy Riley were not "Pinellas County public officials" and thus, the JQC contends that Judge Renke's characterization of them as such was a misrepresentation.

¹ The JQC references Exhibit B in Amended Formal Charge V, but the names referenced in Charge V appear on Exhibit A, not Exhibit B, to the Notice of Amended Formal Charges. Accordingly, Exhibit A is attached as Exhibit 1.

3. Paul Bedinghaus, Gail Hebert, John Milford, George Jirotko and Nancy Riley were either Precinct or State Committee Office Holders for the Republican Party. (See Exhibit 1).

4. Florida Statutes, Article IX required these office holders to sign a Loyalty Oath.

5. The Loyalty Oath form is promulgated by the Florida Department of State, Division of Elections and is known as form DS-DE 24 (Rev. 04/04) and DS-DE 24C (Rev. 2/99). (See Loyalty Oath forms, attached as Composite Exhibit 2).

6. The Loyalty Oath form requires the candidate to aver, among other facts, that he or she is a “candidate for public office” and that they have qualified for “no other public office in the state.” (Exhibit 2).

7. Florida Statutes, section 103.091 sets forth the procedure for the election of State Committeemen and State Committeewomen and Precinct Committee members on the executive committee of a party. Section 103.091 specifically provides that these offices are to be:

. . . elected for 4-year terms at the first primary election in each year a presidential election is held. The terms shall commence on the first day of the month following each presidential general election; but the name of candidates for political party offices shall not be placed on the ballot at any other election.

Fla. Stat. § 103.091 (4). Section 103.091 further provides:

The results of such election shall be by a plurality of the votes cast. In such event, electors seeking to qualify for such office shall do so with

the Department of State or supervisor of elections not earlier than noon of the 57th day. . .preceding the first primary election.

Fla. Stat. § 103.091(4).

8. In addition to the elected State Committeemen and State Committeewomen members and Precinct Committee members, Florida Statutes, section 103.081(6)(a)(1) states that members of the Legislature are included on the committee.

9. John Renke, II, was a member of the Florida Legislature from 1984 through 1990 and in such capacity occasionally worked on the election codes. Moreover, John Renke, II, campaigned for and ultimately was elected to serve as a State Committeeman in Pasco County in the primary election held on August 31, 2004. John Renke, II, understood that he was going to be elected by the people who voted in the State elections and that his name was on the printed state ballot prepared by the Supervisor of Elections. (See Official Sample Ballot, Primary Election, August 31, 2004, attached as Exhibit 3).

10. John Renke II advised Judge Renke that State Committeemen and Committeewomen and Precinct Committee members were “public officials” based on his analysis and his experience.

ARGUMENT

Special Counsel has the burden of proving any violations of the charged Judicial Canons by clear and convincing evidence. Florida courts define the term ‘clear and convincing evidence’ as follows:

[T]he evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

Exhibit A to the Notice of Amended Formal Charges accurately describes these office holders as “public officials.” Judge Renke’s father, who was also an advisor to his campaign, understood that these office holders were each required to sign a Loyalty Oath indicating that they were a “candidate for public office” and had to aver that they had “qualified for no other public office.” (Exhibit 2). In fact, when John Renke, II, ran for State Committeeman in Pasco County in the August 2004 primary election, he was also required to sign the Loyalty Oath Form and was on the ballot for the primary election, which was open to members of the public who were registered voters. Consequently, Judge Renke reasonably

understood that State Committeemen, State Committeewomen and Committee precinct members were “public” officials.

The premise of Amended Formal Charge Five is the JQC’s belief that State Committeemen, State Committeewomen and Precinct Committee members are not “public” officials. On the other hand, based on the experience of John Renke, II, and his understanding of election statutes, Judge Renke in good faith understood that the individuals referenced in Amended Charge Five were “public” officials. Whether the JQC’s interpretation or Judge Renke’s understanding is ultimately correct is of no consequence. For purposes of evaluating Amended Charge Five, the only issue is whether the JQC can meet the actual malice standard in proving Judge Renke misrepresented the status of the officials with knowledge of the falsity of these statements or seriously doubting the truth of the statements.

“Reliance upon a reliable source insulates a defendant from a finding of actual malice as a matter of law.” Dockery v. Florida Democratic Party, 799 So. 2d 291 (Fla. 2d DCA 2001) (citing Rosenbloom v. Metromedia, Inc., 403 U.S. 29 (1971)). Judge Renke had reliable information indicating that they were indeed public officials. The Loyalty Oath forms for State Committeemen and State Committeewomen is an official form created by the Florida Department of State, Division of Elections and clearly states that they are candidates for “public office.” Even if the JQC disagrees with this language, Judge Renke was justified in relying

upon this characterization by the Florida Department of State. Consequently, as a matter of law, the JQC cannot meet the actual malice standard.

The JQC can only suggest that based on its independent consideration of these statements, Judge Renke's characterization was a "false statement negligently made." However, negligent misstatements are not sanctionable under Canon 7. Rather, Canon 7 prohibits a candidate from making knowing misrepresentations.

Moreover, as the Eleventh Circuit has determined, the First Amendment protects erroneous statements in a judicial campaign that are negligently uttered. Weaver v. Bonner, 309 F.3d 1312 (11th Cir. 2002). In pertinent part, the Weaver Court held, "[n]egligent misstatements must be protected in order to give protected speech the 'breathing space' it requires." Weaver at 1320. If the Hearing Panel ultimately disagrees with the Florida Department of State and determines that these office holders are not "public officials," the JQC still cannot prove violations of Canons 7A(3)(a) and 7A(3)(d)(iii) because it cannot show that Judge Renke knew the statements were false or made the statements with reckless disregard of their falsity. To the contrary, the undisputed facts demonstrate Judge Renke's good faith and reasonable basis for representing that they were "public" officials.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this ____ day of September, 2005, the original of the foregoing Trial Brief Addressing Amended Formal Charge V has been furnished by electronic transmission via e-file@flcourts.org and furnished by FedEx overnight delivery to: Honorable Thomas D. Hall, Clerk, Supreme Court of Florida, 500 South Duval Street, Tallahassee, Florida 32399-1927; and true and correct copies have been furnished by hand delivery to Judge James R. Wolf, Chairman, Hearing Panel, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; Marvin E. Barkin, Esquire, and Michael K. Green, Esquire, Special Counsel, 2700 Bank of America Plaza, 101 East Kennedy Boulevard, P. O. Box 1102, Tampa, Florida 33601-1102; Ms. Brooke S. Kennerly, Executive Director, Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; John R. Beranek, Esquire, Counsel to the Hearing Panel, P.O. Box 391, Tallahassee, Florida 32302; and Thomas C. MacDonald, Jr., Esquire, General Counsel, Florida Judicial Qualifications Commission, 1904 Holly Lane, Tampa, Florida 33629.

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